

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11652-WGY

JOHN D. CERQUEIRA,)
)
 Plaintiff,)
) **TRANSCRIPT of JURY QUESTIONS**
v.)
) **Jury Trial - Day 5**
AMERICAN AIRLINES, INC.,)
)
 Defendant.)

BEFORE: The Honorable William G. Young, District Judge,
 and a Jury

APPEARANCES:

BIRNBAUM & GODKIN, LLP
By: David S. Godkin, Esq.
 Darleen F. Cantelo, Esq.
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- and -
PUBLIC CITIZEN LITIGATION GROUP
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On behalf of John D. Cerqueira

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ALSO PRESENT: Melissa M. Wangenheim, Paralegal

One Courthouse Way
Boston, Massachusetts

January 11, 2007

1 THE CLERK: Calling Civil Action 05-11652,
2 Cerqueira versus American Airlines.

3 THE COURT: Do I have counsel for both sides?

4 MR. FITZHUGH: Yes, your Honor.

5 THE COURT: "Where is the deposition of Rhonda
6 Cobbs?"

7 I'm not saying a word about that. And the
8 parties put the evidence in. I would propose since
9 they've been very -- how do they know the page numbers?
10 I'm fascinated by this.

11 MR. GODKIN: Your Honor, they must have taken
12 notes when we were reading from those pages.

13 THE COURT: Well, since we know what portions of
14 the depositions were read, I propose that you -- and the
15 clerk and I will do it -- you just give me those page
16 numbers with an indication of what was read, and I'll
17 redact the rest. I'll give the jury a cautionary
18 instruction that they are going to -- even though I'm
19 giving them the specifics, they are to keep in mind the
20 entire testimony, both live and other things that were
21 read from the deposition. But we'll answer their
22 question.

23 All right, we'll bring the jury in.

24 MR. GODKIN: Your Honor, we actually -- unless
25 you have them, I don't know that we have the documents

1 here. My office is five minutes away. I can --

2 THE COURT: Well, I'll tell them as soon as we
3 can, but they should go on deliberating.

4 MR. FITZHUGH: We may have them here, your
5 Honor, if I may.

6 THE COURT: I know you'll cooperate. I can give
7 them the instructions and we'll get to it.

8 MR. FITZHUGH: I do have the depositions.

9 THE COURT: Fine. So just coordinate, and then
10 pass up the page with some indication of what is to be
11 shown to them, and I'll see that the rest is redacted.

12 MR. FITZHUGH: We don't have the jury's note
13 with the page numbers, your Honor.

14 THE COURT: It's Sally Walling, page 19; and Amy
15 Milenkovic, page 31.

16 THE CLERK: All rise for the jury.

17 (Jury in at 2:45 p.m.)

18 THE CLERK: Court is in session. Please be
19 seated.

20 THE COURT: Let the record show that the ten
21 deliberating jurors are present in the courtroom. And I
22 have two questions which I'll read.

23 The first question: "Depositions to read in
24 jury room or be read to: Sally Walling, page 19; Amy
25 Milenkovic, page 31."

1 Is that the first question, Madam Forelady?

2 THE FOREPERSON: Yes.

3 THE COURT: And the second question: "Where is
4 the deposition of Rhonda Cobbs? Can we see it?"

5 Is that the next question, Madam Forelady?

6 THE FOREPERSON: Yes.

7 THE COURT: To those questions I make these
8 answers: That's the formal way of doing it. The first
9 question is: Of course. It will take us just a minute,
10 physically, to get those documents, and then we'll send
11 in precisely what was read to you. There may be more on
12 the page, and I'll blank that out. But that's easy.
13 This is a question that is -- we commonly get, and it's
14 a good question.

15 And of course we will give you what you want. I
16 do it with this caution: When I give you what you
17 specifically want, you'll be able to see that specific
18 evidence; but in fairness, you must consider all the
19 other portions of the deposition which were read to you,
20 if any, and you must also consider how that witness
21 testified orally here at trial. My caution is simply:
22 because I'm sending something in to you in writing,
23 don't think that's the be-all and end-all of that
24 witness's testimony. That's not fair.

25 That's the answer to my first question. And

1 we'll do that for both the excerpts that you wanted sent
2 in just as soon as we can. Go on with your
3 deliberations, but as soon as I can get that worked out,
4 Ms. Smith will bring it in.

5 The second question about Rhonda Cobbs: the
6 answer to that has to be "no." It's up to the parties
7 to put the evidence before you. You don't go and look
8 at what other discovery materials they may or may not
9 have produced. I express no opinion on it at all. I
10 forget, candidly, whether a deposition of Ms. Cobbs was
11 even mentioned, but they're the ones who decide what to
12 put before you. They've done their job and put
13 everything before you that they want to put before you.
14 So we don't send anything else in.

15 That's my answer to the questions. You may
16 retire and continue --

17 MR. FITZHUGH: Your Honor, may we come up before
18 the jury retires?

19 THE COURT: Yes, you may.

20 MR. FITZHUGH: It might be helpful.

21 (Discussion at sidebar and out of the hearing of
22 the jury.)

23 MR. FITZHUGH: I only ask because I think they
24 may have meant Walling, 31, and Milenkovic 19, and the
25 reason I say that is because Ms. Walling's testimony on

1 19 was about the issue of them -- whether they were
2 dark; and Ms. Milenkovic, on page 19, I believe was the
3 reference they wanted. That's why I thought you might
4 want to check with them to see if they transposed the
5 numbers. Because Ms. Milenkovic was talking about the
6 accents on page 19 and Ms. Walling was talking about
7 them being dark on page 31. That's my understanding.

8 THE COURT: That's very fair. Very fair.

9 MR. FITZHUGH: Before you send them back and
10 have to bring them back out, I wanted to bring it to
11 your attention, Judge.

12 THE COURT: Thank you.

13 IN OPEN COURT

14 THE COURT: Here's counsel doing their job.
15 Counsel suggests to me that maybe you've reversed the
16 numbers, because on page 31, Ms. Walling is talking
17 about either accents or being dark, and on page 19, Ms.
18 Milenkovic is talking about accents or being dark, and
19 on the pages the way you've got them, they're talking
20 about other things.

21 So I can't ask you any question. What I'm going
22 to do is send you out. If you think you may have
23 transposed the pages you want, simply send out another
24 writing and say: "That's what we want" or "The pages
25 have been transposed," or say: "We want what we asked

1 for." Just tell me what you want, and whatever you ask
2 for, if those pages were read, they'll be sent in. All
3 of this is in an attempt, simply, to help you.

4 You may retire and continue your deliberations.

5 THE CLERK: All rise for the jury.

6 (Jury out at 2:50 p.m.)

7 THE COURT: Mr. Fitzhugh, the Court is deeply
8 indebted to you. Let's do this: Pass up 19 and 31 from
9 each deposition, if there were portions from each
10 deposition of those pages read. And then we'll wait and
11 see what they say.

12 MR. GODKIN: Your Honor, we don't have our copy
13 here. Can we look --

14 THE COURT: Of course. You just look over his
15 shoulder. And folks, we'll stand in recess on this
16 case, so all of you stand easy. I have another matter,
17 and we'll try to get that set up. You work it out among
18 yourselves, but just indicate it because I'll --

19 MR. FITZHUGH: I could pass up the entire
20 transcript. They're minis.

21 THE COURT: Well, I know. But I need it
22 indicated, what was read.

23 (Jury question is passed to the Court.)

24 THE COURT: Please be seated, folks.

25 This will be on the question: "Sally Walling,

1 page 31; Amy Milenkovic, pages 18 and 19. Yes, the
2 heavy accent and dark pages."

3 That answers us. He will go out in the hall
4 with you. You're to take the revised pages, you're to
5 indicate everything on those pages that was read to the
6 jury, and Mr. Dunn will then prepare those portions,
7 redacted, like with white stuff over it and Xerox it.

8 So just those portions come in. Come back, give
9 them to Ms. Smith. And thank you very much. That will
10 do it.

11 MR. FITZHUGH: Your Honor, there was one other
12 thing, though. On Ms. Milenkovic's testimony, I went
13 back and asked her questions on redirect to clarify.

14 THE COURT: Too late. I've given them the
15 charge. That's how we're doing it. I gave them the
16 caution that they were to consider everything.

17 (The proceedings adjourned at 2:55 p.m.)

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C E R T I F I C A T E

I, Marcia G. Patrisso, RPR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Civil Action No. 05-11652-WGY, Cerqueira v. American Airlines.

MARCIA G. PATRISSE, RPR, CRR
Official Court Reporter

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